

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOARDS OF TRUSTEES OF THE  
NORTHWEST PLUMBING AND  
PIPEFITTING INDUSTRY HEALTH  
WELFARE AND VACATION TRUST, et al.,

Plaintiffs,

v.

DAY & NIGHT MECHANICAL HEATING  
AND COOLING, INC., et al.,

Defendants.

Case No. C13-6-JPD

ORDER GRANTING MOTION TO  
COMPEL AND MOTION FOR  
PRODUCTION OF EMPLOYMENT  
RECORDS

Plaintiffs initiated this action in order to enforce the terms of trust agreements entered into between the parties. This matter is before the Court on plaintiffs' Motion to Compel Responses to Requests for Production and Motions to Compel Production of Employment Security Department Records. Dkts. 18, 20. To date, defendants have failed to respond to either motion. Having reviewed plaintiffs' motions, the declarations and exhibits attached thereto, all governing authorities and the balance of the record, the Court ORDERS as follows:

1 (1) Plaintiffs' Motion to Compel Response to Requests for Production, Dkt. 18, is  
2 GRANTED. Specifically, plaintiffs served the defendants with Requests for Production on  
3 March 22, 2013 by e-mail and legal messenger. Dkt. 19 at ¶¶ 2-3 (First Dwarzski Decl.). On  
4 April 12, 2013, defendants provided Rule 26 disclosures of names of individuals likely to have  
5 discoverable information, but otherwise failed to respond to plaintiffs' requests. *Id.*, Ex. C.  
6 Plaintiffs followed up by phone and e-mail on April 26, 2013 and April 29, 2013, requesting  
7 production of the requested records, but have yet to receive them. *Id.* at ¶¶ 5-7. Plaintiffs  
8 allege that they require the requested records in order to conduct a payroll audit to determine  
9 the exact amount owed to the Trust Funds by the defendants, if anything, as well as the  
10 elements of a potential alter-ego claim.

11 Beyond providing the Rule 26 disclosures, defendants have failed to respond to any of  
12 plaintiffs' requests. When parties fail to comply with proper discovery requests, Federal Rule  
13 of Civil Procedure 37 authorizes motions to compel discovery. Fed. R. Civ. P. 37. "The  
14 motion must include a certification that the movant has in good faith conferred or attempted to  
15 confer with the person or party failing to make the discovery in an effort to secure the  
16 information or material without court action." Fed. R. Civ. P. 37(a)(2)(B). The Court has  
17 wide discretion in regulating the discovery process. *Little v. City of Seattle*, 863 F.2d 681, 685  
18 (9th Cir.1988). The Court finds that plaintiffs have attempted to confer with the party failing  
19 to make discovery in an effort to secure the information, but these efforts have been  
20 unsuccessful. **Accordingly, defendants are ORDERED to respond to all remaining**  
21 **document requests to which it has not already responded within fourteen (14) days of the**  
22 **date of this Order.**

23 (2) Plaintiffs' Motion for Order Requiring Production of Employment Security  
24 Department Records of Day & Night Mechanical Heating & Cooling, Inc., and Day & Night  
25 HVAC, Inc., Dkt. 20, is also GRANTED. Specifically, plaintiffs assert that an audit of  
26 payroll records for benefit contributions due on behalf of employees performing bargaining

1 unit work for defendants is necessary “the period of June 2011 through current.” Dkt. 21 at ¶  
2 1 (Second Dwarzski Decl.). Plaintiffs represent that “the only other way to determine the  
3 amount of contributions due to the plaintiff Trust Funds is by examination of the employer’s  
4 payroll records, including state taxing information such as the quarterly reports submitted to  
5 the State of Washington Employment Security Department. Defendants have not provided  
6 the requested discovery in this lawsuit and plaintiffs must obtain information that would  
7 permit a determination by the Trust Funds’ auditor of the amounts due and whether the  
8 companies are alter-egos.” *Id.* at ¶ 2.

9 In light of the fact that defendants’ former legal counsel has terminated his  
10 representation, and to date, defendants have failed to obtain a replacement attorney as  
11 required by the local rules of this district, the Court finds that the plaintiffs’ need for the  
12 information contained in these records outweighs the privacy and confidentiality of the  
13 information or records. *See* RCW 50.13.070 (providing that “[i]nformation or records  
14 deemed private and confidential under this chapter shall be available to parties to judicial . . .  
15 proceedings only upon a finding by the presiding officer that the need for the information of  
16 records in the proceeding outweighs any reasons for the privacy and confidentiality of the  
17 information or records,” and that this finding is required before such information or records  
18 shall be available in discovery proceedings). Accordingly, the Washington State Employment  
19 Security Department is ORDERED to produce copies of originals of all documents or records  
20 related to employee reports of the employees of defendants Day & Night Mechanical Heating  
21 & Cooling, Inc. and Day & Night HVAC, Inc. for the period of June 2011 through the date of  
22 this Order. The Washington State Employment Security Department shall produce these  
23 records at a mutually agreed upon time and place with plaintiff’s counsel, or failing such  
24 agreement, at the offices of plaintiffs’ counsel within fourteen (14) days of the date of this  
25 Order. **However, plaintiffs’ counsel is ordered to review and maintain these records in**  
26 **confidence, and to only disclose information that is absolutely necessary to prosecute**

1 **this action.**

2 (3) The Clerk is directed to send a copy of this Order to all the parties.

3 DATED this 24th day of September, 2013.

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6 JAMES P. DONOHUE  
7 United States Magistrate Judge  
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